

1999 DRAFTING REQUEST

Bill

Received: **04/06/1999**

Received By: **malaigm**

Wanted: **As time permits**

Identical to LRB:

For: **Jean Hundertmark (608) 266-3794**

By/Representing: **Kevin Lewis DHFS**

This file may be shown to any legislator: **NO**

Drafter: **malaigm**

May Contact:

Alt. Drafters:

Subject: **Children - abuse and neglect**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Child abuse and neglect information disclosure, appeals, and citizen review panels

Instructions:

Draft as separate bill page 317, items 14 and 15 and page 318, item 16 of LFB Budget Summary (LRB-0087/3,-0088/3 and -0090/4). For /2 see attached.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	malaigm 04/07/1999	ygeller 04/07/1999		_____			S&L
/1		1/2 1/19 yg	jfrantze 04/07/1999	_____	lrb_docadmin 04/07/1999	lrb_docadmin 04/28/1999	

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For: **Legislative Fiscal Bureau 6-8017**

By/Representing: **Carabell**

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DHFS

Department of Health and Family Services
1997-99 Biennial Budget Statutory Language Request
June 29, 1998

Title: Public Disclosure of Abuse and Neglect Information

Current Language

Section 48.981(7) relates to the sharing of information from reports and records of child protective services. A number of agencies and individuals are currently allowed such access for specifically identified purposes.

Proposed Change

Pursuant to the reauthorization of the federal Child Abuse Prevention and Treatment Act (CAPTA), each state must provide assurances to the federal government that it has in effect a state law which provides for the "...public disclosure of the findings or information about the case of child abuse or neglect which has resulted in a child fatality or near fatality." The Governor has provided the assurance that this requirement will be in place by June 30, 1999. It is proposed that section 48.981(7)(b) be amended to state, in cases of the death or near death of a child caused by abuse or neglect that a county agency or, in a county having a population of 500,000 or more, the Department, may disclose to the media or the general public certain information from its records, pursuant to policies established by the Department.

Effect of the Change

This change will allow the public disclosure of certain information in cases of the death or near death of a child caused by abuse or neglect.

Rationale for the Change

This will allow Wisconsin to come into compliance with federal requirements. The state risks loss of federal CAPTA funds if it does not comply with the federal CAPTA provisions within the required timeframes.

Desired Effective Date:	Passage of Budget Bill
Agency:	DHFS
Agency Contact:	Sherwood Seigel
Phone:	267-7805

DHFS

Department of Health and Family Services 1999-2001 Biennial Budget Statutory Language Request

Title: Child Abuse Citizen Review Panels

Current Language

Section 48.981(7) relates to the sharing of information from reports and records concerning abused or neglected children. A number of agencies and individuals are currently allowed such access for specifically identified purposes.

Proposed Change

Pursuant to the reauthorization of the federal Child Abuse Prevention and Treatment Act (CAPTA), each state must have citizen review panels with certain prescribed responsibilities. Among these responsibilities is evaluating the extent to which the Department is effectively fulfilling its child protection responsibilities in accordance with the CAPTA state plan. The panels would also review the extent to which the child protective services system is coordinated with the foster care and adoption programs and would also review child fatalities and near fatalities. CAPTA requires the state to provide the panel access to information on cases that the panel desires to review in order to carry out its functions. The proposal is to authorize the creation of not less than three panels, authorize the Department to appoint panel members, and add the panels to those parties currently identified in statute who are authorized access to records of child abuse and neglect. As described in the federal law, the panels should be composed of volunteer members who are broadly representative of the community in which the panel is established, including members who have expertise in the prevention and treatment of child abuse and neglect.

Functions
furnish info

Composition

Effect of the Change

This will allow the sharing of child abuse and neglect case-specific information when required for the panel to fulfill its responsibilities.

Rationale for the Change

This will bring Wisconsin into compliance with federal requirements. DOA had raised the possibility of using an existing group to perform this function when the Department sought to have this statutory change included in the annual budget bill. It is not possible for another group, such as a child fatality panel, to perform this function. This panel currently has access

to child abuse and neglect records under s. 48.981. Based on the federal interpretation of CAPTA, states may designate child fatality panels or foster care review panels to serve as citizen review panels under CAPTA, so long as the panels perform all the functions required of citizen review panels. Since neither the child fatality panels nor foster care review panels are statewide, and since they are volunteer groups with neither the expertise nor interest in performing the functions of the citizen review panels, separate panels must be set up to perform these functions. The state risks loss of federal foster care and adoption CAPTA funds if it does not comply with the federal CAPTA provisions.

Desired Effective Date: Passage of the bill
Agency: DHFS
Agency Contact: Sherwood Seigel
Phone: 267-7805

Title: Appeals of Substantiated Abuse or Neglect Findings

determination under par. (c)4.

Current Language

Under s.48.981(3)(c)4., an agency conducting a child abuse and neglect investigation must determine whether abuse or neglect has occurred or is likely to occur. In most cases, the investigating agency will also determine who it was that abused or neglected the child. Under current statute and policy, there is no formal appeal process for an individual against whom an abuse or neglect allegation has been substantiated to appeal that decision.

Proposed Change

Pursuant to the reauthorization of the federal Child Abuse Prevention and Treatment Act (CAPTA), all states must implement a formal appeals process by which individuals who disagree with an official finding of abuse or neglect can appeal that decision. To meet this requirement it is proposed that section 48.981(3)(e) be amended to permit an appeal of the finding of abuse or neglect in accordance with standards established by the Department.

created

Effect of the Change

This change will create a statewide appeal right applied on the basis of standards established by the Department. It also provides appeal rights for foster parents, and other individuals who disagree with a finding of abuse or neglect.

Rationale for the Change

This will bring Wisconsin into compliance with federal law and creates a basis for an individual to appeal. The state risks loss of federal CAPTA funds if it does not comply with the federal CAPTA provisions within the required timeframes.

Desired Effective Date: Passage of budget bill
Agency: DHFS
Agency Contact: Sherwood Seigel
Phone: 267-7805

"children with disabilities" for "children with handicaps", and substituted "; or" for the concluding period, and added subpara. (C), in para. (6), in subpara. (A), in cl. (i), substituted "children with disabilities" for "children with handicaps", in subpara. (B), in cl. (i), substituted "child with disabilities" for "handicapped child", and in subpara. (C), in cl. (ii), substituted "child with disabilities" for "child with handicaps".

1996. Act Oct. 3, 1996, in the section heading, deleted "or service" following "for demonstration"; substituted subsec. (a) for one which read:

"(a) General authority. (1) Demonstration or service programs and projects. The Secretary, through the Center, shall, in accordance with subsections (b) and (c), make grants to, and enter into contracts with, public agencies or nonprofit private organizations (or combinations of such agencies or organizations) for demonstration or service programs and projects designed to prevent, identify, and treat child abuse and neglect.

"(2) Evaluations. In making grants or entering into contracts for demonstration projects, the Secretary shall require all such projects to be evaluated for their effectiveness. Funding for such evaluations shall be provided either as a stated percentage of a demonstration grant or contract, or as a separate grant or contract entered into by the Secretary for the purpose of evaluating a particular demonstration project or group of projects."

deleted subsec. (b), which read:

"(b) Grants for resource centers. The Secretary shall, directly or through grants or contracts with public or private nonprofit organizations under this section, provide for the establishment of resource centers—

- "(1) serving defined geographic areas;
- "(2) staffed by multidisciplinary teams of personnel trained in the prevention, identification, and treatment of child abuse and neglect; and
- "(3) providing advice and consultation to individuals, agencies, and organizations which request such services."

redesignated subsec. (c) as subsec. (b) and, in subsec. (b) as redesignated, deleted paras. (1) and (2), which read:

- "(1) Training programs—
 - "(A) for professional and paraprofessional personnel in the fields of medicine, law, education, social work, and other relevant fields who are engaged in, or intend to work in, the field of prevention, identification, and treatment of child abuse and neglect;
 - "(B) to provide culturally specific instruction in methods of protecting children from child abuse and neglect to children and to persons responsible for the welfare of children, including parents of and persons who work with children with disabilities; or
 - "(C) to improve the recruitment, selection, and training of volunteers serving in private and public nonprofit children, youth and family service organizations in order to prevent child abuse and neglect through collaborative analysis of current recruitment, selection, and training programs and development of model programs for dissemination and replication nationally.
- "(2) Such other innovative programs and projects as the Secretary may approve, including programs and projects for parent self-help, for prevention and treatment of alcohol and drug-related child abuse and neglect, and for home health visitor programs designed to reach parents of children in populations in which risk is high, that show promise of successfully preventing and treating cases of child abuse and neglect, and for a parent self-help program of demonstrated effectiveness which is national in scope."

redesignated paras. (3)–(7) as paras. (1)–(5), respectively; and added a new subsec. (c).

Redesignation:

This section, enacted as § 7 of Act Jan. 31, 1974, P. L. 93-247, was redesignated § 106 of Title I of such Act by Act Oct. 25, 1989 P. L. 101-126, § 3(a)(1), (2), 103 Stat. 764, effective Oct. 25, 1989, as provided by § 8 of such Act, which appears as 42 USCS § 5102 note; it was further redesignated as § 105 of such Title by Act Oct. 3, 1996, P. L. 104-235, Title I, Subtitle A, § 113(a)(1)(A), 110 Stat. 3079.

RESEARCH GUIDE

Law Review Articles:

Crossley. Infants with anencephaly, the ADA, and the Child Abuse Amendments. 11 Issues L & Med 379, Spring 1996.

§ 5106a. Grants to States for child abuse and neglect prevention and treatment programs (a) Development and operation grants. The Secretary shall make grants to the States, based on the population of children under the age of 18 in each State that applies for a grant under this section, for purposes of assisting the States in improving the child protective services system of each such State in—

- (1) the intake, assessment, screening, and investigation of reports of abuse and neglect;
- (2)(A) creating and improving the use of multidisciplinary teams and interagency protocols to enhance investigations; and
- (B) improving legal preparation and representation, including—
 - (i) procedures for appealing and responding to appeals of substantiated reports of abuse and neglect; and

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- (ii) provisions for the appointment of an individual appointed to represent a child in judicial proceedings;
- (3) case management and delivery of services provided to children and their families;
- (4) enhancing the general child protective system by improving risk and safety assessment tools and protocols, automation systems that support the program and track reports of child abuse and neglect from intake through final disposition and information referral systems;
- (5) developing, strengthening, and facilitating training opportunities and requirements for individuals overseeing and providing services to children and their families through the child protection system;
- (6) developing and facilitating training protocols for individuals mandated to report child abuse or neglect;
- (7) developing, strengthening, and supporting child abuse and neglect prevention, treatment, and research programs in the public and private sectors;
- (8) developing, implementing, or operating—
- (A) information and education programs or training programs designed to improve the provision of services to disabled infants with life-threatening conditions for—
- (i) professional and paraprofessional personnel concerned with the welfare of disabled infants with life-threatening conditions, including personnel employed in child protective services programs and health-care facilities; and
- (ii) the parents of such infants; and
- (B) programs to assist in obtaining or coordinating necessary services for families of disabled infants with life-threatening conditions, including—
- (i) existing social and health services;
- (ii) financial assistance; and
- (iii) services necessary to facilitate adoptive placement of any such infants who have been relinquished for adoption; or
- (9) developing and enhancing the capacity of community-based programs to integrate shared leadership strategies between parents and professionals to prevent and treat child abuse and neglect at the neighborhood level.
- (b) **Eligibility requirements.** (1) State plan. (A) In general. To be eligible to receive a grant under this section, a State shall, at the time of the initial grant application and every 5 years thereafter, prepare and submit to the Secretary a State plan that specifies the areas of the child protective services system described in subsection (a) that the State intends to address with amounts received under the grant.
- (B) Additional requirement. After the submission of the initial grant application under subparagraph (A), the State shall provide notice to the Secretary of any substantive changes to any State law relating to the prevention of child abuse and neglect that may affect the eligibility of the State under this section.
- (2) Coordination. A State plan submitted under paragraph (1) shall, to the maximum extent practicable, be coordinated with the State plan under part B of title IV of the Social Security Act [42 USCS §§ 620 et seq.] relating to child welfare services and family preservation and family support services, and shall contain an outline of the activities that the State intends to carry out using amounts received under the grant to achieve the purposes of this title [42 USCS §§ 5101 et seq.], including—
- (A) an assurance in the form of a certification by the chief executive officer of the State that the State has in effect and is enforcing a State law, or has in effect and is operating a Statewide program, relating to child abuse and neglect that includes—
- (i) provisions or procedures for the reporting of known and suspected instances of child abuse and neglect;
- (ii) procedures for the immediate screening, safety assessment, and prompt investigation of such reports;
- (iii) procedures for immediate steps to be taken to ensure and protect the safety of the abused or neglected child and of any other child under the same care who may also be in danger of abuse or neglect and ensuring their placement in a safe environment;
- (iv) provisions for immunity from prosecution under State and local laws and regulations for individuals making good faith reports of suspected or known instances of child abuse or neglect;
- (v) methods to preserve the confidentiality of all records in order to protect the rights of the child and of the child's parents or guardians, including requirements ensuring that reports and records made and maintained pursuant to the purposes of this Act [42 USCS §§ 5101 et seq.] shall only be made available to—

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HEALTH AND WELFARE

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CHILD ABUSE PREVENTION

42 USCS § 5106a

- (I) individuals who are the subject of the report;
 - (II) Federal, State, or local government entities, or any agent of such entities, having a need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect;
 - (III) child abuse citizen review panels;
 - (IV) child fatality review panels;
 - (V) a grand jury or court, upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury; and
 - (VI) other entities or classes of individuals statutorily authorized by the State to receive such information pursuant to a legitimate State purpose;
- (vi) provisions which allow for public disclosure of the findings or information about the case of child abuse or neglect which has resulted in a child fatality or near fatality;
- (vii) the cooperation of State law enforcement officials, court of competent jurisdiction, and appropriate State agencies providing human services in the investigation, assessment, prosecution, and treatment of child abuse or neglect;
- (viii) provisions requiring, and procedures in place that facilitate the prompt expungement of any records that are accessible to the general public or are used for purposes of employment or other background checks in cases determined to be unsubstantiated or false, except that nothing in this section shall prevent State child protective services agencies from keeping information on unsubstantiated reports in their casework files to assist in future risk and safety assessment;
- (ix) provisions and procedures requiring that in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem, who may be an attorney or a court appointed special advocate (or both), shall be appointed to represent the child in such proceedings—
- (I) to obtain first-hand, a clear understanding of the situation and needs of the child; and
 - (II) to make recommendations to the court concerning the best interests of the child;
- (x) the establishment of citizen review panels in accordance with subsection (c);
- (xi) provisions, procedures, and mechanisms to be effective not later than 2 years after the date of the enactment of this section [enacted Oct. 3, 1996]—
- (I) for the expedited termination of parental rights in the case of any infant determined to be abandoned under State law; and
 - (II) by which individuals who disagree with an official finding of abuse or neglect can appeal such finding;
- (xii) provisions, procedures, and mechanisms to be effective not later than 2 years after the date of the enactment of this section [enacted Oct. 3, 1996] that assure that the State does not require reunification of a surviving child with a parent who has been found by a court of competent jurisdiction—
- (I) to have committed murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of such parent;
 - (II) to have committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of such parent;
 - (III) to have aided or abetted, attempted, conspired, or solicited to commit such murder or voluntary manslaughter; or
 - (IV) to have committed a felony assault that results in the serious bodily injury to the surviving child or another child of such parent; and
- (xiii) an assurance that, upon the implementation by the State of the provisions, procedures, and mechanisms under clause (xii), conviction of any one of the felonies listed in clause (xii) constitute grounds under State law for the termination of parental rights of the convicted parent as to the surviving children (although case-by-case determinations of whether or not to seek termination of parental rights shall be within the sole discretion of the State);
- (D) an assurance that the State has in place procedures for responding to the reporting of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions), procedures or programs, or both (within the State child protective services system), to provide for—
- (i) coordination and consultation with individuals designated by and within appropriate health-care facilities;

HEALTH AND WELFARE

CHILD ABUSE PREVENTION

42 USCS § 5106a

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panel established under

(I) shall not disclose to any person or government official any identifying information about any specific child protection case with respect to which the panel is provided information; and

(II) shall not make public other information unless authorized by State statute.

(ii) Civil sanctions. Each State that establishes a panel pursuant to paragraph (1) shall establish civil sanctions for a violation of clause (i).

(5) State assistance. Each State that establishes a panel pursuant to paragraph (1)—

(A) shall provide the panel access to information on cases that the panel desires to review if such information is necessary for the panel to carry out its functions under paragraph (4); and

(B) shall provide the panel, upon its request, staff assistance for the performance of the duties of the panel.

(6) Reports. Each panel established under paragraph (1) shall prepare and make available to the public, on an annual basis, a report containing a summary of the activities of the panel.

(d) Annual State data reports. Each State to which a grant is made under this section shall annually work with the Secretary to provide, to the maximum extent practicable, a report that includes the following:

(1) The number of children who were reported to the State during the year as abused or neglected.

(2) Of the number of children described in paragraph (1), the number with respect to whom such reports were—

- (A) substantiated;
- (B) unsubstantiated; or
- (C) determined to be false.

(3) Of the number of children described in paragraph (2)—

- (A) the number that did not receive services during the year under the State program funded under this section or an equivalent State program;
- (B) the number that received services during the year under the State program funded under this section or an equivalent State program; and
- (C) the number that were removed from their families during the year by disposition of the case.

(4) The number of families that received preventive services from the State during the year.

(5) The number of deaths in the State during the year resulting from child abuse or neglect.

(6) Of the number of children described in paragraph (5), the number of such children who were in foster care.

(7) The number of child protective services workers responsible for the intake and screening of reports filed in the previous year.

(8) The agency response time with respect to each such report with respect to initial investigation of reports of child abuse or neglect.

(9) The response time with respect to the provision of services to families and children where an allegation of abuse or neglect has been made.

(10) The number of child protective services workers responsible for intake, assessment, and investigation of child abuse and neglect reports relative to the number of reports investigated in the previous year.

(11) The number of children reunited with their families or receiving family preservation services that, within five years, result in subsequent substantiated reports of child abuse and neglect, including the death of the child.

(12) The number of children for whom individuals were appointed by the court to represent the best interests of such children and the average number of out of court contacts between such individuals and children.

(e) Annual report by the Secretary. Within 6 months after receiving the State reports under subsection (d), the Secretary shall prepare a report based on information provided by the States for the fiscal year under such subsection and shall make the report and such information available to the Congress and the national clearinghouse for information relating to child abuse.

(Jan. 31, 1974, P. L. 93-247, Title I, § 106 [107] [8], as added April 25, 1988, P. L. 100-294, Title I, § 101, 102 Stat. 103; Oct. 25, 1989, P. L. 101-126, § 3(a)(1), (2), 103 Stat. 764; May 28, 1992, P. L. 102-295, Title I, Subtitle B, § 114(a)-(c), 106 Stat. 192; Nov. 4, 1992, P. L. 102-586, § 9(b), 106 Stat. 5037; Oct. 3, 1996, P. L. 104-235, Title I, Subtitle A, §§ 107, 113(a)(1)(A), 110 Stat. 3071, 3079.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1992. Act May 28, 1992 (effective on 10/1/93, or on October 1 of the first fiscal year for which

ACF Administration for Children and Families	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration on Children, Youth and Families	
	1. Log No: ACYF-CB-PI-98-10	2. Issuance Date: June 29, 1998
	3. Originating Office: Children's Bureau	
	4. Key Words: CAPTA; Appeals Requirement	

PROGRAM INSTRUCTION

TO: The State Office, Agency or Organization Designated by the Governor to Apply for a State Child Abuse and Neglect State Grant under the Child Abuse Prevention and Treatment Act (CAPTA)

SUBJECT: Guidance on the CAPTA State plan assurance for States to have an appeals process in place no later than October 3, 1998 for individuals who disagree with an official finding of child abuse or neglect

LEGAL AND RELATED

REFERENCES: Section 106(b)(2)(A)(xi)(II) of CAPTA; ACYF-NCCAN-PIQ-97-01, Dated April 30, 1997; and ACYF-NCCAN-PIQ-97-03, Dated September 26, 1997

PURPOSE:

The purpose of this issuance is to provide instruction to the States on the establishment of the appeals process required by section 106(b)(2)(A)(xi)(II) of CAPTA.

BACKGROUND:

The 1996 CAPTA amendments (Public Law 104-235) authorize the annual award of funds to States that submit State plans and meet certain other eligibility criteria. Specifically, subsection (b) of section 106 requires the State to submit with its State plan certain assurances signed by the Governor of the State. One of those assurances is for the State to have provisions, procedures, and mechanisms in place by October 3, 1998 for an appeals process by which individuals who disagree with an official finding of child abuse or neglect can appeal such a finding.

As we have stated in previous issuances, this requirement applies to the perpetrator of child abuse or neglect (ACYF-NCCAN-PIQ-97-03, Q/A #5) and applies to all States receiving funds under a CAPTA State plan, not just States with Central Registries (ACYF-NCCAN-PIQ-97-01, Q/A #19). This requirement is to assure that individuals who have been found by the State to have committed child abuse or neglect are afforded due process.

INSTRUCTION:

By October 3, 1998, States must have in place an appeals process by which an individual who is officially found to have committed child abuse or neglect can appeal such a finding. States have some flexibility in determining the type of appeals process that best meets their needs. For example, the appeals process can be established through the courts, through some other external appeals process, or through an internal appeals process.

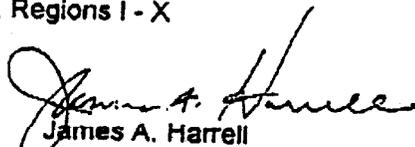
- courts
- external
- internal

The appeals process, however, must meet the following minimum conditions in order to satisfy the CAPTA requirements:

- (1) The process must afford the individual with a finding of child abuse or neglect an opportunity for due process.
- (2) The office or individual(s) hearing such appeals cannot be involved in any other stage of the case.
- (3) The office or individual(s) established to hear such appeals must have the authority to overturn a previous finding of child abuse or neglect.
- (4) Individuals must be given written notification of their right to appeal, and the method by which they may appeal, at the time they are notified of the official finding of child abuse or neglect.

EFFECTIVE DATE: October 3, 1998

INQUIRIES TO: ACF Regional Offices, Regions I - X


James A. Harrell
Deputy Commissioner
Administration on Children, Youth
and Families

280/1

DNote

SOON

jlg

DOA:.....Fossum - Appeals of substantiated abuse or neglect findings
FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

appeals of substantiated child abuse or neglect findings, public disclosure of child abuse and neglect information and access to child abuse and neglect information by a child abuse and neglect citizen review panel

Gen. Cat.

1 AN ACT relating to the budget

(county department)

Analysis by the Legislative Reference Bureau
HEALTH AND HUMAN SERVICES
CHILDREN

Under current law, an agency that is responsible for investigating reports of suspected or threatened child abuse or neglect (in most cases the county department of human services or social services, but in some cases the department of health and family services (DHFS) or a child welfare agency) must determine, within 60 days after receipt of such a report, whether abuse or neglect has occurred or is likely to occur. Currently, there is no procedure for appealing that determination. This bill permits a person who has been found to have abused or neglected a child to appeal that finding in accordance with procedures established by DHFS.

Insert A-1
Insert A-2

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 2 SECTION 1. 48.981 (3) (c) 4. of the statutes is amended to read:
- 3 48.981 (3) (c) 4. The county department or, in a county having a population of
- 4 500,000 or more, the department or a licensed child welfare agency under contract

1 with the department shall determine, within 60 days after receipt of a report,
2 whether abuse or neglect has occurred or is likely to occur. The determination shall
3 be based on a preponderance of the evidence produced by the investigation. A
4 determination that abuse or neglect has occurred may not be based solely on the fact
5 that the child's parent, guardian or legal custodian in good faith selects and relies on
6 prayer or other religious means for treatment of disease or for remedial care of the
7 child. In making a determination that emotional damage has occurred, the county
8 department or, in a county having a population of 500,000 or more, the department
9 or a licensed child welfare agency under contract with the department shall give due
10 regard to the culture of the subjects. If a determination contains a finding that a
11 specific person has abused or neglected a child, the county department, department
12 or licensed child welfare agency making the determination shall notify that person
13 in writing, at the time that the person is notified of the determination, of the person's
14 right to appeal under par. (e) and of the method by which the person may appeal. This
15 subdivision does not prohibit a court from ordering medical services for the child if
16 the child's health requires it.

17 SECTION 2. 48.981 (3) (e) of the statutes is created to read:

18 48.981 (3) (e) *Appeal of determination.* If a determination under par. (c) 4.
19 contains a finding that a specific person has abused or neglected a child, that person
20 may appeal that finding in accordance with procedures established by the
21 department.

22 (END)



DOA.....Fossum - Public disclosure of abuse and neglect information
FOR 1999-01 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau
HEALTH AND HUMAN SERVICES
CHILDREN

Under current law, an agency responsible for investigating reports of suspected or threatened child abuse or neglect (usually the county department of human services or social services, but in some cases the department of health and family services (DHFS) or a child welfare agency) must keep its records confidential and may disclose those records only under certain exceptions. This bill permits such an agency, subject to standards established by DHFS, to disclose to the news media and the general public information from the agency's records in cases in which a child died or was placed in serious or critical condition as a result of abuse or neglect.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 48.981 (7) (cm) of the statutes is amended to read:

3 48.981 (7) (cm) ~~An~~ Notwithstanding par. (a), an agency may disclose
4 information from its records for use in proceedings under s. 48.25 (6), 813.122 or
5 813.125.

1 SECTION 2. 48.981 (7) (d) of the statutes is amended to read:

2 48.981 (7) (d) The Notwithstanding par. (a), the department may have access
3 to any report or record maintained by an agency under this section.

4 SECTION 3. 48.981 (7) (dm) of the statutes is created to read:

5 48.981 (7) (dm) Notwithstanding par. (a), an agency may, subject to standards
6 established by the department, disclose to the news media and the general public
7 information from the agency's records concerning a case in which a child died or was
8 placed in serious or critical condition, as certified by a physician, as a result of abuse
9 or neglect. An agency may not disclose under this paragraph any information that
10 would identify a reporter. Any person who receives any information under this
11 paragraph may disclose that information to anyone.

12 (END)

D-Note

This draft relates to Carabell Bank #'s 152, 153
and 154.

G.M.Y.

Insert A-1

DOA.....Fossum - Public disclosure of abuse and neglect information
FOR 1999-01 BUDGET -- NOT READY FOR INTRODUCTION

1 ~~AN ACT ... relating to the budget.~~

that is

~~Analysis by the Legislative Reference Bureau~~
~~HEALTH AND HUMAN SERVICES~~
~~CHILDREN~~

Under current law, an agency responsible for investigating reports of suspected or threatened child abuse or neglect ~~usually the county department of human services or social services, but in some cases the department of health and family services (DHFS) or a child welfare agency~~ must keep its records confidential and may disclose those records only under certain exceptions. This bill permits such an agency, subject to standards established by DHFS, to disclose to the news media and the general public information from the agency's records in cases in which a child died or was placed in serious or critical condition as a result of abuse or neglect.

~~The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:~~

2 SECTION 1. 48.981 (7) (cm) of the statutes is amended to read:
3 48.981 (7) (cm) ~~An Notwithstanding par. (a), an agency may disclose~~
4 information from its records for use in proceedings under s. 48.25 (6), 813.122 or
5 813.125.

(end of report)

Insert A-2

DOA:.....Fossum - Child abuse citizen review panels

FOR 1999-01 BUDGET -- NOT READY FOR INTRODUCTION

1 ~~AN ACT ... relating to: the budget.~~

Analysis by the Legislative Reference Bureau

~~HEALTH AND HUMAN SERVICES~~

~~CHILDREN~~

Under current federal law, each state that receives a grant under the federal Child Abuse Prevention and Treatment Act (CAPTA) must establish not less than three child abuse and neglect citizen review panels to evaluate the extent to which local agencies responsible for providing child protective services are effectively discharging their responsibilities and must ensure that otherwise confidential child abuse and neglect records are made available to those panels. This bill permits a child abuse and neglect citizen review panel established by ~~the department of health and family services (DHFS)~~ or a county department ~~of human services or social services (county department)~~ to have access to the otherwise confidential child abuse and neglect records of an agency responsible for child protection as necessary for the panel to carry out its functions.

WFO-Fix component

→ For further information see the ~~state~~ ^{*and local*} fiscal estimate, which will be printed as an appendix to this bill.

~~The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:~~

(end of insert)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2801/1dn
GMM:jlg&kmg:jf

April 7, 1999

This draft relates to Carabell Yank #'s 152, 153 and 154.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: Gordon.Malaise@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2801/1dn
GMM:jlg&kmg:jf

April 7, 1999

This draft relates to Carabell Yank #'s 152, 153 and 154.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: Gordon.Malaise@legis.state.wi.us



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-2801/1
GMM:jlg&kmg:jf

1999 BILL

1 **AN ACT to amend** 48.981 (3)(c) 4., 48.981 (7)(cm) and 48.981 (7)(d); and **to create**
2 48.981 (3)(e), 48.981 (7)(a) 18. and 48.981 (7)(dm) of the statutes; **relating to:**
3 appeals of substantiated child abuse or neglect findings, public disclosure of
4 child abuse and neglect information and access to child abuse and neglect
5 information by a child abuse and neglect citizen review panel.

Analysis by the Legislative Reference Bureau

Under current law, an agency that is responsible for investigating reports of suspected or threatened child abuse or neglect (in most cases the county department of human services or social services (county department), but in some cases the department of health and family services (DHFS) or a child welfare agency) must determine, within 60 days after receipt of such a report, whether abuse or neglect has occurred or is likely to occur. Currently, there is no procedure for appealing that determination. This bill permits a person who has been found to have abused or neglected a child to appeal that finding in accordance with procedures established by DHFS.

Under current law, an agency that is responsible for investigating reports of suspected or threatened child abuse or neglect must keep its records confidential and may disclose those records only under certain exceptions. This bill permits such an agency, subject to standards established by DHFS, to disclose to the news media and the general public information from the agency's records in cases in which a child died or was placed in serious or critical condition as a result of abuse or neglect.

BILL

1 in writing, at the time that the person is notified of the determination, of the person's
2 right to appeal under par. (e) and of the method by which the person may appeal. This
3 subdivision does not prohibit a court from ordering medical services for the child if
4 the child's health requires it.

5 **SECTION 2.** 48.981 (3) (e) of the statutes is created to read:

6 48.981 (3) (e) *Appeal of determination.* If a determination under par. (c) 4.
7 contains a finding that a specific person has abused or neglected a child, that person
8 may appeal that finding in accordance with procedures established by the
9 department.

10 **SECTION 3.** 48.981 (7) (a) 18. of the statutes is created to read:

11 48.981 (7) (a) 18. A child abuse and neglect citizen review panel established by
12 the department or a county department if the panel determines that access to the
13 records of an agency responsible for child protection is necessary for the panel to
14 carry out its functions.

15 **SECTION 4.** 48.981 (7) (cm) of the statutes is amended to read:

16 48.981 (7) (cm) ~~An~~ Notwithstanding par. (a), an agency may disclose
17 information from its records for use in proceedings under s. 48.25 (6), 813.122 or
18 813.125.

19 **SECTION 5.** 48.981 (7) (d) of the statutes is amended to read:

20 48.981 (7) (d) ~~The~~ Notwithstanding par. (a), the department may have access
21 to any report or record maintained by an agency under this section.

22 **SECTION 6.** 48.981 (7) (dm) of the statutes is created to read:

23 48.981 (7) (dm) Notwithstanding par. (a), an agency may, subject to standards
24 established by the department, disclose to the news media and the general public
25 information from the agency's records concerning a case in which a child died or was

SUGGESTED POSSIBLE LANGUAGE FOR CAPTA COMPLIANCE

Submitted by DHFS

DEFINITION

Section 48.981(1)(cv) is created to read:

✓ (cv) "Near fatality" means a case in which a physician determines that a child is in serious or critical condition ~~as the result of sickness or injury caused by~~ suspected abuse ~~under s. 48.02(1)~~ or neglect ~~under s. 48.981(1)(d)~~

APPEAL RIGHTS AND LIMITATIONS

Section 48.981(3)(c)5m. is created to read:

✓ 5m. ~~If~~ ^h as the result of the investigation, the agency ~~substantiates~~ ^{shall} a specific person as having abused or neglected a child, the agency ~~must~~ ^{shall} notify that person, within 15 calendar days ~~of the agency's determination, of that determination, the person's right to request a review or~~ ^{after} appeal of that ~~decision~~ ^{may} and the process by which that ~~review or appeal is to be requested.~~

~~b.~~ ^{review} The request for an appeal may be held in abeyance if criminal charges have been filed or the district attorney indicates that an investigation which may result in charges being filed is ongoing or a petition under s. 48.13 has been or is being filed with the court. *pending the outcome*

Section 48.981(3)(d)3. is created to read:

~~3.a. If, as the result of the independent investigation, the agency substantiates a specific person as having abused or neglected a child, the agency that conducted the independent investigation must notify that person, within 15 calendar days of the agency's determination, of~~

do not need (d)2. powers & duties same as (-)

~~that determination, the person's right to request a review or appeal of that decision and the process by which that review or appeal is to be requested. The agency that conducted the independent investigation is responsible for conducting the review or appeal, unless the appeal is under ch. 227 or is to the court.~~

~~b. The request for an appeal may be held in abeyance if criminal charges have been filed or the district attorney indicates that an investigation which may result in charges being filed is ongoing or a petition under s. 48.13 has been or is being filed with the court.~~

CITIZEN REVIEW PANELS

Section 48.981(7)(a)15g. is created to read:

Gov's budget

15g. A citizen review panel ^{established or designated} recognized by the ^{or designated} county department or ^{a county} the department.

DISCLOSURE TO THE PUBLIC

Section 48.981(7)(cr) is created to read:

(cr)1. In this paragraph, "fatality" means the death of a child as a result of ~~sickness or injury caused by suspected abuse under s. 48.02(1) or neglect under~~

^{"near fatality"} s. 48.981(1)(d).

2. Notwithstanding par. (a), a county ^{department} agency or, in a county having a population of 500,000 or more, the department, within 5 working days after a request, shall disclose to the ^{any member of the} public, upon request, the findings and information related to a child fatality or near fatality, as described in subd. 4., in any of the following circumstances:

a. A person is criminally charged with having caused the child fatality or near fatality.

b. The district attorney indicates that a person would have been charged with having caused the child fatality or near fatality but for the fact that the person has died.

~~c. The child named in the report has died.~~

d. A judge, law enforcement official, ~~a~~ district attorney or other state or local agency or official has ~~publicly disclosed, as required by law in the performance of official duties, the~~ ^{to the public:} ~~provision of child welfare services or the investigation by child welfare services of the abuse or neglect of the child.~~ ^{that} ^{have been provided} ^{has been investigated}

e. The parent, legal custodian or guardian ^{or} ^{of} the child ^{if} over 14 years of age has ~~made a~~ ^{now} ^{by} ^{to the public contents of report or record} ~~prior knowing, voluntary, public disclosure.~~

3. Notwithstanding ^{subd. 2} ~~subpart. a to e~~, ^{and} a county agency or the department may not disclose the information ^{described} under subd. 4. if any of the following factors is present:

a. ~~The county agency director or the secretary of the department or his or her designee,~~ ~~after consultation with appropriate legal counsel,~~ determines that the disclosure of the information would be contrary to the best interests of the child, the child's siblings or any other ^{residing} children in the household or is likely to cause mental, emotional or physical harm or danger to a child residing in the deceased or injured child's home.

b. The district attorney determines that the disclosure would have a detrimental effect on any ongoing or future criminal investigation or prosecution.

c. The district attorney determines that the disclosure would likely jeopardize a defendant's right to a fair trial.

d. The agency, ~~after consultation with legal counsel,~~ determines that the disclosure is not authorized by federal law or regulation.

e. ^(the) ~~If an~~ investigation of a report has not yet been completed, ^{in which case} information released under this subdivision shall be limited to a statement that the report is under investigation.

4. Information which may be disclosed under this paragraph is the following:

detrimental
to ongoing
investigation

a. The name and age of the child who is the subject of the report., if that information has previously been disclosed to the public.

b. Identification of child protective or other services provided to the child or the child's family and any other actions taken regarding the child and the child's family.

c. Whether any report of abuse or neglect regarding the child had been previously made, the date of any previous report and whether or not a substantiated finding had been made or any other outcome had resulted in response to that report.

d. The result of any review conducted by the department or any other agency relative to the child's death or near death.

relating
child fatality review team
citizen review panel
multidisciplinary team
CASA program

5. Notwithstanding subd. 4., the county agency or department shall not disclose confidential records in the custody of the agency, obtained from other sources, the records or content of any psychiatric, psychological or therapeutic evaluations] or any information that would reveal the identities of persons who reported the abuse or neglect or who provided information related to suspected abuse or neglect of the child.

48396(5)
6. Any person whose request for information under this paragraph is denied may request the court to order the release of the information. The request must set forth factors supporting the request. After the court has reviewed the specific findings and information, in camera, the court shall issue an order compelling disclosure unless the court finds that one or more of the factors in subd. 3. exists.

7. An agency or its employees acting in good faith in disclosing or declining to disclose information under this paragraph is immune from criminal or civil liability arising out of the disclosure or refusal to disclose.

good faith presumed

Malaise, Gordon

From: Kevin Lewis [LEWISKA@dhfs.state.wi.us]
Sent: Saturday, January 08, 2000 4:17 PM
To: Gordon Malaise; gordon.malaise@legis.state.wi.us
Cc: Susan Dreyfus; John Kiesow
Subject: CAPTA requirements - new draft request



CAPTA2nd.doc

Gordon,

Happy New Year.

I was soundly rebuffed in my attempt to get the so-called CAPTA requirements bill picked up by influential legislators. The problem is the issue of "public disclosure." As you may recall, the current draft is broad in its reference to information that could be released by an agency to the news media and the general public in accord with "standards established by the department." This doesn't sit well with most legislators and so we went back to the drawing boards.

DHFS requests another bill draft that is much more explicit in the treatment of public disclosure provisions. To this end, we submit the attached document as a model of what we think could work.

While I have learned that it is best to submit drafting instructions to the LRB and let the professionals come up with the appropriate statutory text, in this case we found it easier for ourselves to present possible language for you to consider and work with. We borrowed heavily from Maine and Minnesota which have already passed these CAPTA requirements into law. To try to explain in narration the gist of these elements would have been difficult and probably unproductive. And so I hope that you can work with this approach. If you want us to supply more information, we'd be happy to.

Elements of the New Approach

- 1) Inclusion of a definition of "near fatality." This would join the list of other terms defined at the beginning of 48.981 and is important for the section on public disclosure to be added later.
- 2) Sections on Appeal Rights: There are two pieces to this, one for general substantiation, the second for substantiations resulting from independent investigations of someone working in the child welfare system. We grant the agency 15 days for notification (as opposed to immediate notification). Finally, we have an exception if criminal charges have been filed. We placed this after par. (5) and before par. (6) because it seemed to flow chronologically. However, we respect your judgment on its placement in the section if you think otherwise.
- 3) The reference to Citizen Review Panels is simplified. Given that the panels must review specific cases and evaluate the extent to which the agencies are effectively discharging CPS responsibilities, these panels will have to have access to individual records.
- 4) There is a very lengthy section introducing the federal mandate for public disclosure to ensure accountability of CPS agencies. The section starts with a definition of fatality. We do not propose to introduce this definition earlier because an earlier placement may muddy the waters with respect to the scope of responsibilities of the citizen review panels. We'd like the def. of fatality to be specific to section (7). What follows then is a lengthy set of directions governing when public disclosure must take place and when it cannot, what may be disclosed and what cannot.

I cannot stress enough how important this legislation is for the child welfare program. As a condition of continued receipt of CAPTA funding, the Governor has to make assurances to the federal government that Wisconsin is in compliance with the CAPTA laws. The legislation that results from this proposal will be our vehicle for bringing us into compliance.

Thanks so much for your work on this. Please let me know how I might assist you.

Kevin Lewis
Legislative Liaison
DHFS
266-3262

7 minor for purposes of section 13.04, subdivision 2, when the
8 parent or guardian is the alleged perpetrator of the abuse or,
9 neglect, or domestic abuse/exposure to violence.

Proposed change in MN law

10 Sec. 32. Minnesota Statutes 1996, section 626.556 is
11 amended by adding a subdivision to read:

12 Subd. 11d. [DISCLOSURE IN CHILD FATALITY OR NEAR FATALITY
13 CASES.] (a) The definitions in this paragraph apply to this
14 section.

law

15 (1) "Child fatality" means the death of a child from
16 suspected abuse, neglect, or maltreatment.

17 (2) "Near fatality" means a case in which a physician
18 determines that a child is in serious or critical condition as
19 the result of sickness or injury caused by suspected abuse,
20 neglect, or maltreatment.

21 (3) "Findings and information" means a written summary
22 described in paragraph (c) of actions taken or services rendered
23 by a local social services agency following receipt of a report.

24 (b) Notwithstanding any other provision of law and subject
25 to the provisions of this subdivision, a public agency shall
26 disclose to the public, upon request, the findings and
27 information related to a child fatality or near fatality if:

28 (1) a person is criminally charged with having caused the
29 child fatality or near fatality; or

30 (2) a county attorney certifies that a person would have
31 been charged with having caused the child fatality or near
32 fatality but for that person's prior death.

33 (c) Findings and information disclosed pursuant to this
34 subdivision shall consist of a written summary that includes any
35 of the following information the agency is able to provide:

36 (1) the dates, outcomes, and results of any actions taken

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[COUNSEL] JW

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1 or services rendered;

2 (2) the results of any review of the state child mortality
3 review panel, a local child morality review panel, a local
4 community child protection team, or any public agency; and

5 (3) confirmation of the receipt of all reports, accepted or
6 not accepted, by the local welfare agency for assessment of
7 suspected child abuse, neglect, or maltreatment, including
8 confirmation that investigations were conducted, the results of
9 the investigations, a description of the conduct of the most
10 recent investigation and the services rendered, and a statement
11 of basis for the agency's determination.

12 (d) Nothing in this subdivision authorizes access to the
13 confidential records in the custody of a local social services
14 agency, or the disclosure to the public of the records or
15 content of any psychiatric, psychological, therapeutic
16 evaluations, or the disclosure of information that would reveal
17 the identities of persons who provided information related to
18 suspected abuse, neglect, or maltreatment of the child.

19 (e) Within five working days from the receipt of a request
20 for findings and information related to a child fatality or near
21 fatality, a local agency shall consult with the appropriate
22 county attorney and provide the findings and information unless
23 the agency has a reasonable belief that the release of the
24 information:

25 (1) is not authorized by paragraphs (a) and (b);

26 (2) is likely to cause mental, emotional, or physical harm
27 or danger to a minor child residing in the deceased or injured
28 child's household or is a child who is the sibling of the

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7 suspected child abuse, neglect, or maltreatment, including
8 confirmation that investigations were conducted, the results of
9 the investigations, a description of the conduct of the most
10 recent investigation and the services rendered, and a statement
11 of basis for the agency's determination.

12 (d) Nothing in this subdivision authorizes access to the
13 confidential records in the custody of a local social services
14 agency, or the disclosure to the public of the records or
15 content of any psychiatric, psychological, therapeutic
16 evaluations, or the disclosure of information that would reveal
17 the identities of persons who provided information related to
18 suspected abuse, neglect, or maltreatment of the child.

19 (e) Within five working days from the receipt of a request
20 for findings and information related to a child fatality or near
21 fatality, a local agency shall consult with the appropriate
22 county attorney and provide the findings and information unless
23 the agency has a reasonable belief that the release of the
24 information:

25 (1) is not authorized by paragraphs (a) and (b);

26 (2) is likely to cause mental, emotional, or physical harm
27 or danger to a minor child residing in the deceased or injured
28 child's household or is a child who is the sibling of the
29 deceased or injured child;

30 (3) is likely to jeopardize the state's ability to
31 prosecute the defendant;

32 (4) is likely to jeopardize the defendant's right to a fair
33 trial;

34 (5) is the subject of an ongoing or future criminal
35 investigation or prosecution;

36 (6) is not authorized by federal law and regulations; or

1 (7) could result in physical or emotional harm to an
2 individual.

3 (f) A person whose request is denied may apply to the
4 appropriate court for an order compelling disclosure of the
5 findings and information of the public agency. The application
6 must set forth, with reasonable particularity, factors
7 supporting the application. The court has jurisdiction to issue
8 such orders. Actions under this section must be set down for
9 immediate hearing, and subsequent proceedings in those actions
10 must be accorded priority by the appellate courts. After the
11 court has reviewed the specific findings and information, in
12 camera, the court shall issue an order compelling disclosure
13 unless the court finds that one or more of the circumstances in
14 paragraph (e) exists.

15 (f) A public agency or its employees acting in good faith
16 in disclosing or declining to disclose information under this
17 section are immune from criminal or civil liability that might
18 otherwise be incurred or imposed for that action.

19 Sec. 33. [EFFECTIVE DATE.]

20 The effective date of sections 1 to 32 shall be the day
21 following final enactment."

22 Delete the title and insert:

23 "A bill for an act relating to human services; providing
24 for child welfare reform; restricting release of certain
25 information; establishing citizen review panels; clarifying
26 jurisdiction; defining terms; imposing duties; amending
27 Minnesota Statutes 1996, sections 13.391; 256.01, subdivision
28 12, and by adding a subdivision; 257.42; 257.43; 259.24,
29 subdivision 1; 259.37, subdivision 2; 260.011, subdivision 2;
30 260.141, by adding a subdivision; 260.172, subdivision 1;
31 260.191, subdivision 1e; 260.221; and 626.556, subdivisions 10,
32 10h, 11a, and by adding a subdivision; Minnesota Statutes 1997
33 Supplement, sections 144.218, subdivision 2; 245A.03,
34 subdivision 2; 245A.04, subdivisions 3b and 3d; 257.85,
35 subdivision 5; 259.22, subdivision 4; 259.47, subdivision 3;
36 259.60, subdivision 2; 260.012; 260.015, subdivision 20.

Alcove

§4008-A. Child abuse and neglect investigations: disclosure

1. Disclosure permitted. Notwithstanding any other provision of law, the commissioner, with the advice of the Attorney General, may disclose information as set forth in this section regarding the abuse or neglect of a child and the investigation of and any services related to the abuse and neglect if the commissioner determines that such disclosure is not contrary to the best interests of the child, the child's siblings or other children in the household and any one of the following factors is present:

disclose under any of these circumstances unless not in best int. of child

A. The alleged perpetrator of the abuse or neglect has been charged with committing a crime related to the allegation of abuse or neglect maintained by the department;

B. A judge, a law enforcement agency official, a district attorney or another state or local (investigative) agency or official has publicly disclosed, as required by law in the performance of official duties, the provision of child welfare services or the investigation by child welfare services of the abuse or neglect of the child;

C. An individual who is the parent, custodian or guardian of the victim or a child victim over 14 years of age has made a prior knowing, voluntary, public disclosure; or

D. The child named in the report has died.

2. Information. For the purposes of this section, the following information may be disclosed:

A. The name and age of the abused or neglected child. If the child is under 13 years of age, the guardian ad litem must agree with the commissioner to release the information. If the child is

not limited to fatality or near fatality

PL 1997, c. 328 §1
Effective 9/19/97

13 years of age or older, the guardian ad litem and the child must agree with the commissioner to release the information;

~~B.~~ The determination by the local child protective service or the state agency that investigated the alleged abuse or neglect and the findings of the applicable investigating agency upon which the determination was based;

~~C.~~ Identification of child protective or other services provided or actions, if any, taken regarding the child and the child's family;

~~D.~~ Whether any report of abuse or neglect regarding the child has been substantiated as maintained by the Department;

~~E.~~ Any actions taken by child protective services in response to reports of abuse or neglect of the child to the department, including, but not limited to, actions taken after every report of abuse or neglect of the child and the dates of the reports;

~~F.~~ Whether the child or the child's family has received care or services from the child welfare services prior to every report of abuse or neglect of the child; and

~~G.~~ Any extraordinary or pertinent information concerning the circumstances of the abuse or neglect of the child and the investigation of the abuse or neglect, if the commissioner determines the disclosure is consistent with the public interest.

3. **Limitations.** The following limitations apply to information disclosed pursuant to this section.

~~A.~~ Information released prior to the completion of the investigation of a report must be limited to a statement that a report is under investigation.

~~B.~~ If there has been a prior disclosure pursuant to paragraph A, information released in a case in which the report has not been substantiated is limited to the statement that the investigation has been completed and the report has not been substantiated.

~~C.~~ If the report has been substantiated, information may be released pursuant to subsection 2.

~~D.~~ The disclosure may not identify or provide any identifying description of the source of the report, and may not identify the name of the abused or neglected child's siblings, the parent or other person legally responsible for the child or any other members of the child's household, other than the subject of the report.

4. **Considerations.** In determining pursuant to subsection 1 whether disclosure would be contrary to the best interests of the child, the child's siblings or other children in the household, the commissioner shall consider the privacy of the child and the child's family and the effects that disclosure may have on efforts to reunite and provide services to the family.

5. **Other releases and disclosure.** Except as it applies directly to the cause of the abuse or neglect of the child, nothing in this section authorizes the release or disclosure of the substance or content of any psychological, psychiatric, therapeutic, clinical or medical reports, evaluations or similar materials or information pertaining to the child or the child's family.

Maine

abuse
services
investigation

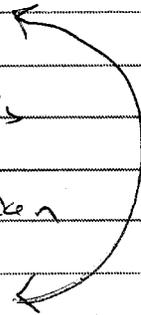
May disclose if not contrary to best int. and

- perpetrator charged w/ crime
- disclosed that services provided or investigation made
- parent... has made prior disclosure
- child has died * not limited to fatality or near fatality

Information that may be disclosed

- name & age - if GAR agrees
- determination & findings
- Services provided or actions taken
- whether previous substantiated reports
if so, date & report, action taken
- whether rec'd services prior to report
- Extraordinary info.

if
Substantiated



Limitations

- Statement that is under investigation
- IP ↑, & not substantiated, statement that investigation complete & not substantiated

- Not I.D.-reporter

- child & siblings, parent etc other than child

Consideration

best int. - privacy & effects on reunite & provide services

Psychological, etc ... sensitive personal info

Minnesota

"findings & info" = written summary of info.

shall disclose re fatality, or near fatality if

That's
all

- perpetrator charged
- would have been charged but for death

Info that may be disclosed

- Action taken or services rendered - date, outcomes, results

- Results of review

* - Confirmation receipt of ^{all} reports

TH

- investigations conducted

- results of investigations

- services rendered

- basis for determination

No access

- Confidential info

- Psychological

- Reporter

(e)

Provide info unless

- harm or danger to child, sibling, etc or any other individual
- ~~not~~ jeopardize ability to prosecute
- " right to fair trial
- " ongoing or future investigation
- not authorized Fed law

If denied my petition ct

- set forth factors supporting
- immediate hearing - prior appeal
- in camera - order disclose unless (e)

Immunity

STATE OF WISCONSIN
Department of Health and Family Services
Office of the Secretary

DATE: 1/12/00

TO: Gordon Malaise
LRB

FROM: KEVIN LEWIS
LEGISLATIVE LIAISON

IN RESPONSE TO YOUR REQUEST

FOR YOUR INFORMATION

Gordon, 99-2801/2
Rep. Jean Hundertmark has agreed
to sponsor this bill. Please draft
it at her request so that the 1/2
version can be shipped to her directly.
Thanks! Kevin

DUE^{BY}-FRI

1999 - 2000 LEGISLATURE

LRB-2801/1

(3) RWA

GMM:jlg:jf

This week ~~the~~

established or designated by the department of health and family services or a county department of human services or social services

1999 BILL

when there is a child fatality or near fatality

of suspected or threatened child abuse or neglect

regenerate ✓

1 AN ACT to amend 48.981 (3) (c) 4., 48.981 (7) (cm) and 48.981 (7) (d); and to create
2 48.981 (3) (e), 48.981 (7) (a) 18. and 48.981 (7) (dm) of the statutes; relating to:
3 appeals of substantiated child abuse or neglect findings, public disclosure of
4 certain child abuse and neglect information, and access to child abuse and neglect
5 information by a child abuse and neglect citizen review panel.

or, in Milwaukee county, the

Analysis by the Legislative Reference Bureau

a under contract with DHFS

Under current law, an agency that is responsible for investigating reports of suspected or threatened child abuse or neglect (in most cases the county department of human services or social services (county department), but in some cases the department of health and family services (DHFS) or a child welfare agency) must determine, within 60 days after receipt of such a report, whether abuse or neglect has occurred or is likely to occur. Currently, there is no procedure for appealing that determination. This bill permits a person who has been found to have abused or neglected a child to appeal that finding in accordance with procedures established by DHFS.

Insert A-1 ✓

a county department, DHFS, or a child welfare

(agency) ✓

Under current law, an agency that is responsible for investigating reports of suspected or threatened child abuse or neglect must keep its records confidential and may disclose those records only under certain exceptions. This bill permits such an agency, subject to standards established by DHFS, to disclose to the news media and the general public information from the agency's records in cases in which a child died or was placed in serious or critical condition as a result of abuse or neglect.

Insert A-2 ✓

BILL

or must designate one or more existing entities as citizen review panels,

or designated

(use twice)
reports and

Under current federal law, each state that receives a grant under the federal Child Abuse Prevention and Treatment Act (CAPTA) must establish not less than three ~~child abuse and neglect~~ citizen review panels to evaluate the extent to which local agencies responsible for providing child protective services are effectively discharging their responsibilities and must ensure that otherwise confidential child abuse and neglect records are made available to those panels. This bill permits a ~~child abuse and neglect~~ citizen review panel established by DHFS or a county department to have access to the otherwise confidential child abuse and neglect records of an agency responsible for child protection as necessary for the panel to carry out its functions.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 48.981 (3) (c) 4. of the statutes is amended to read:

2 48.981 (3) (c) 4. The county department or, in a county having a population of

3 500,000 or more, the department or a licensed child welfare agency under contract

4 with the department shall determine, within 60 days after receipt of a report,

5 whether abuse or neglect has occurred or is likely to occur. The determination shall

6 be based on a preponderance of the evidence produced by the investigation. A

7 determination that abuse or neglect has occurred may not be based solely on the fact

8 that the child's parent, guardian or legal custodian in good faith selects and relies on

9 prayer or other religious means for treatment of disease or for remedial care of the

10 child. In making a determination that emotional damage has occurred, the county

11 department or, in a county having a population of 500,000 or more, the department

12 or a licensed child welfare agency under contract with the department shall give due

13 regard to the culture of the subjects. If a determination contains a finding that a

14 specific person has abused or neglected a child, the county department, department

15 or licensed child welfare agency making the determination shall notify that person

BILL

1 ~~in writing, at the time that the person is notified of the determination, of the person's~~
 2 ~~right to appeal under par. (c) and of the method by which the person may appeal. This~~
 3 ~~subdivision does not prohibit a court from ordering medical services for the child if~~
 4 ~~the child's health requires it.~~

5 SECTION 2. 48.981 (3) (e) of the statutes is created to read:

6 48.981 (3) (e) *Appeal of determination.* If a determination under par. (c) 4.
 7 contains a finding that a specific person has abused or neglected a child, that person
 8 may appeal ~~that finding in accordance with procedures established by the~~
 9 ~~department.~~

Insert
3-9

10 SECTION 3. 48.981 (7) (a) ~~18.~~ ^(15g.) of the statutes is created to read: ^{or designated}

11 48.981 (7) (a) ^(15g.) ~~18.~~ A child abuse and neglect citizen review panel established by
 12 the department or a county department ~~if the panel determines that access to the~~
 13 ~~records of an agency responsible for child protection is necessary for the panel to~~
 14 ~~carry out its functions.~~

15 SECTION 4. 48.981 (7) (cm) of the statutes is amended to read:

16 48.981 (7) (cm) ~~An~~ Notwithstanding par. (a), an agency may disclose
 17 information from its records for use in proceedings under s. 48.25 (6), 813.122 or
 18 813.125.

Insert
3-18

19 SECTION 5. 48.981 (7) (d) of the statutes is amended to read:

20 48.981 (7) (d) The Notwithstanding par. (a), the department may have access
 21 to any report or record maintained by an agency under this section.

22 ~~SECTION 6. 48.981 (7) (dm) of the statutes is created to read:~~

23 ~~48.981 (7) (dm) Notwithstanding par. (a), an agency may, subject to standards~~
 24 ~~established by the department, disclose to the news media and the general public~~
 25 ~~information from the agency's records concerning a case in which a child died or was~~

BILL

SECTION 6

1 placed in serious or critical condition, as certified by a physician, as a result of abuse
2 or neglect. An agency may not disclose under this paragraph any information that
would identify a reporter. Any person who receives any information under this
paragraph may disclose that information to anyone.

~~3~~
~~4-4~~ 4
5

(END)

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2801/2
GMM.....

(INSERT A-1)

(no P)

an appeal of such a determination made by a county department may be made under the municipal administrative procedure law or, if the county of the county department has elected not to be governed by that law, under a county ordinance that provides a procedure for an appeal of such a determination, and an appeal of such a determination made by DHFS may be made under the state administrative procedure and review law. Current law does not provide a procedure for appealing such a determination by a child welfare agency.

This bill requires DHFS to establish procedures for conducting an appeal of a determination that a specific person has abused or neglected a child and to include in those procedures a procedure permitting such an appeal to be held in abeyance pending the outcome of any criminal or child in need of protection or services (CHIPS) proceeding based on the alleged abuse or neglect or any investigation that may lead to the filing of a criminal complaint or a CHIPS petition based on the alleged abuse or neglect. Under the bill, if a county department, DHFS or a child welfare agency determines that a specific person has abused or neglected a child, the county department, DHFS or child welfare agency must notify the person of the determination, the person's right to appeal the determination and the procedure by which the person may appeal the determination, and the person may appeal the determination in accordance with the procedures established by DHFS.

(END OF INSERT)

(INSERT A-2)

(no P)

This bill requires an agency to disclose to any member of the general public, on request, a written summary of certain information relating to any child who has died or been placed in serious or critical condition as a result of suspected abuse or neglect that has been reported to the agency (child fatality or near fatality) if certain circumstances apply and certain other circumstances do not apply.

Specifically, an agency must disclose all of the information specified in the next paragraph if a person has been charged with a crime for causing the death or serious or critical condition of the child as a result of ~~the~~ suspected abuse or neglect or if a person who is deceased would have been so charged, but for the fact that the person is deceased; if a judge, district attorney, law enforcement officer or agency or any other officer or agency whose official duties include the investigation or prosecution of crime has previously disclosed to the public that the suspected abuse or neglect has been investigated or that child welfare services have been provided to the child or the child's family; or if a parent, guardian or legal custodian of the child or the child, if 14 years of age or over, has previously disclosed or authorized the disclosure of the information, unless the agency determines that disclosure of the information would be contrary to the best interests of the child, the child's siblings or any other child residing in the same dwelling as the child who is the subject of the report or that disclosure of the information is likely to cause mental, emotional or physical harm.

(NO P)

An agency may not disclose such information if any of the following circumstances apply:

of suspected ~~abuse~~ ^{abuse} or neglect

(NO P)

of suspected abuse or neglect

2

or danger to the child, the child's siblings, any other child residing in the same dwelling as the child who is the subject of the report or any other person; the district attorney determines that disclosure of the information would jeopardize any ongoing or future criminal investigation or prosecution or would jeopardize a defendant's right to a fair trial; disclosure of the information is not authorized by federal law or regulation; or the investigation of the abuse or neglect report has not been completed, in which case the agency may only disclose that the report is under investigation.

3
4

The information that must be disclosed on request in cases of a child fatality or near fatality is as follows:

1. The name and age of the child, but only if that information has previously been disclosed to the public.
2. A description of any investigation made, services offered or provided and any other action taken by the agency with respect to the child and the child's family in response to the report, and a statement of the determination of the agency as to whether abuse or neglect occurred and the basis for that determination.
3. Whether any previous report of suspected or threatened abuse or neglect of the child has been made to the agency, the date of the previous report, whether a determination was made in response to the previous report that abuse or neglect had occurred or was likely to occur and whether any services were offered or provided to the child or the child's family or any other action taken by the agency in response to the previous report.
4. Whether the child or the child's family has received any child welfare prior to the report of the suspected abuse or neglect that caused the child fatality or near fatality or prior to any previous report of suspected or threatened abuse or neglect.
5. The results of any review conducted relating to the child fatality or near fatality.

The bill prohibits certain information being disclosed to the general public on request in cases of a child fatality or near fatality. Information that may not be disclosed is as follows:

1. Any reports of suspected or threatened child abuse or neglect made to the agency, any child abuse or neglect records maintained by the agency and the contents of those reports and records.
2. Any information that would reveal the identity of the child who is the subject of the report, the child's siblings, the child's parent, guardian or legal custodian or any other person residing in the same dwelling as the child, unless that information has previously been disclosed to the public, and any information that would reveal the identity of the person who reports the suspected abuse or neglect or any other person who provides information relating to the suspected abuse or neglect.
3. Any confidential medical, psychological or psychiatric information or other, similar sensitive personal information of the child or any member of the child's family.

(END OF INSERT)

(INSERT 3-9)

INS 3-9

SECTION 1. 48.981 (3) (c) 5m. of the statutes is created to read:

48.981 (3) (c) 5m. If the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department determines under subd. 4. that a specific person has abused or neglected a child, the county department, department or licensed child welfare agency, within 15 days after the date of the determination, shall notify the person in writing of the determination, the person's right to appeal the determination and the procedure by which the person may appeal the determination, and the person may appeal the determination in accordance with the procedures established by the department under this subdivision. The department shall establish procedures for conducting an appeal under this subdivision. Those procedures shall include a procedure permitting an appeal under this subdivision to be held in abeyance pending the outcome of any criminal proceedings or any proceedings under s. 48.13 based on the alleged abuse or neglect or the outcome of any investigation that may lead to the filing of a criminal complaint or a petition under s. 48.13 based on the alleged abuse or neglect. Those procedures need not be promulgated as rules.

SECTION 2. 48.981 (3) (cm) of the statutes is amended to read:

48.981 (3) (cm) *Contract with licensed child welfare agencies.* A county department may contract with a licensed child welfare agency to fulfill the county department's duties specified under par. (c) 1., 2. b., 2m. b., 5., 6., 6m. and 8. The department may contract with a licensed child welfare agency to fulfill the department's duties specified under par. (c) 1., 2. a., 2m. b., 3., 4., 5., 5m., 6., 6m., 7., 8. and 9. in a county having a population of 500,000 or more. The confidentiality



INS 3-9 cont

provisions specified in sub. (7) shall apply to any licensed child welfare agency with which a county department or the department contracts.

History: Sup. Ct. Order, 59 Wis. 2d R1, R3 (1973); 1977 c. 355; 1977 c. 447 s. 210; 1979 c. 300; 1983 a. 172, 190, 299, 538; 1985 a. 29 ss. 917 to 930m, 3200 (56); 1985 a. 176, 234; 1987 a. 27, 186, 209; 1987 a. 332 s. 64; 1987 a. 334, 355, 399, 403; 1989 a. 31, 41, 102, 316, 359; 1991 a. 160, 263; 1993 a. 16, 105, 218, 227, 230, 246, 272, 318, 395, 413, 446, 491; 1995 a. 275, 289, 369, 456; 1997 a. 27, 114, 292, 293; s. 13.93 (2) (c).

(END OF INSERT)

3-9

(INSERT 3-18)

SECTION 3. 48.981 (7) (cr) [✓] of the statutes is created to read:

48.981 (7) (cr) 1. Notwithstanding par. (a) [✓] and subject to subds. 3. and 4. [✓], upon the request of any member of the general public, an agency shall disclose, within 5 working days ^{after} the request, a written summary of the information specified in subd. 2. [✓] relating to any child who has died or been placed in serious or critical condition, as determined by a physician, as a result of any suspected abuse or neglect that has been reported under this section if any of the following circumstances apply:

a. A person has been charged with a crime for causing the death or serious or critical condition of the child as a result of the suspected abuse or neglect ^{or} the district attorney indicates that a person who is deceased would have been charged with a crime for causing the death or serious or critical condition of the child as a result of the suspected abuse or neglect, but for the fact that the person is deceased.

b. A judge, district attorney, law enforcement officer, law enforcement agency or any other officer or agency whose official duties include the investigation or prosecution of crime has previously disclosed to the public, in the performance of the official duties of the officer or agency, that the suspected abuse or neglect of the child has been investigated under sub. (3) [✓] or that child welfare services have been provided to the child or the child's family under this chapter.



c. A parent, guardian or legal custodian of the child or the child, if 14 years of age or over, has previously disclosed or authorized the disclosure of the information specified in subd. 2. ✓

2. If an agency is required to disclose information under subd. 1. relating to a child who has died or been placed in serious or critical condition as a result of any suspected abuse or neglect that has been reported under this section, the agency shall disclose all of the following information:

a. The name and age of the child, but only if that information has previously been disclosed to the public.

b. A description of any investigation made, services offered or provided and any other action taken by the agency with respect to the child and child's family in response to the report of ^{stet}the suspected abuse or neglect, and a statement of the determination made by the agency under sub. (3) (c) 4. ✓ and the basis for that determination.

c. Whether any previous report of suspected or threatened abuse or neglect of the child has been made to the agency, the date of the previous report, whether a determination was made in response to the previous report that abuse or neglect had occurred or was likely to occur and whether any services were offered or provided to the child or the child's family or any other action taken by the agency in response to the previous report.

d. Whether the child or the child's family has received any services under this chapter prior to the report of suspected abuse or neglect that caused the child's death or serious or critical condition or any previous report of suspected or threatened abuse or neglect. *use the child*



e. The results of any review conducted by the department, a multidisciplinary child abuse and neglect team, a child fatality review team, a citizen review panel, a court-appointed special advocate program or any other agency relating to the death or serious or critical condition of the child.

3. An agency may not disclose any of the information described in subd. 2. if any of the following ^{applies} ~~apply~~ ^{or keep}

a. The agency determines that disclosure of the information would be contrary to the best interests of the child who is the subject of the report, the child's siblings or any other child residing in the same dwelling as the child who is the subject of the report or that disclosure of the information is likely to cause mental, emotional or physical harm or danger to the child who is the subject of the report, the child's siblings, any other child residing in the same dwelling as the child who is the subject of the report or any other person.

b. The district attorney determines that disclosure of the information would jeopardize any ongoing or future criminal investigation or prosecution or would jeopardize a defendant's right to a fair trial.

c. Disclosure of the information is not authorized by federal law or regulation.

d. The investigation under sub. (3) of the report of ~~the~~ ^{set} suspected abuse or neglect has not been completed, in which case the agency may only disclose that the report is under investigation. If an agency discloses under this subd. ~~3. d.~~ ^{3. d.} that a report is under investigation and if after completing that investigation the agency determines that the ~~suspected abuse or neglect~~ ^{report} has not been substantiated, the agency may only disclose a statement that the investigation has been completed and that the report has not been substantiated.

4. An agency may not disclose any of the following:

In disclosing information under subd. 2, an.



a. Any reports made to, or records maintained by, ^{the} ~~a~~ agency under this section or the contents of those reports or records.

b. Any information that would reveal the identity of the child who is the subject of the report, the child's siblings, the child's parent, guardian or legal custodian or any other person residing in the same dwelling as the child, unless that information has previously been disclosed to the public, or that would reveal the identity of a reporter or any other person who provides information relating to the suspected abuse or neglect of the child.

c. Any confidential medical, psychological or psychiatric information or other, similar sensitive personal information relating to the child or any member of the child's family.

5. Any person whose request for information under [✓]subd. 1. is denied may petition the court to order the disclosure of the information specified in sub^d. 2. On receiving a petition under this subdivision, the court shall notify the agency, the district attorney, the child and the child's parent, guardian or legal custodian of the petition. If any person notified objects to the disclosure, the court may hold a hearing to take evidence and hear argument relating to the disclosure of the information. The court shall make an in camera [✓]inspection of the information sought to be disclosed and shall order disclosure of the information, unless the court finds that any of the circumstances specified in subd. 3. [✓]apply.

6. Any person acting in good faith in disclosing or refusing to disclose the information specified in subd. 2. in response to a request for that information under subd. 1. is immune from any liability, civil or criminal, that may result by reason of that disclosure or [✓]nondisclosure. For purposes of any proceeding, civil or criminal, the good faith of a person in disclosing or refusing to disclose the information



specified in subd. 2. in response to a request for that information under subd. 1. shall be presumed.

(END OF INSERT)